

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By **Chairman Tom Keating**, on January 12, 1999 at
3:00 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Tom Keating, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Alvin Ellis (R)
Sen. Bob Keenan (R)
Sen. Walter McNutt (R)
Sen. Bill Wilson (D)
Sen. Vicki Cocchiarella (D)
Sen. Sue Bartlett (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Branch
Gilda Clancy, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 67, SB 77, SB 21
1/5/99
Executive Action: None

HEARING ON SB 67

Sponsor: SEN. DALE MAHLUM, SD 35, Missoula

Proponents: David Aronorsky, Legal Counsel, University System
Leroy Schrumm, Board of Regents

Opponents: Christine Kauffman, Montana Human Rights Network
Jim Nys, Human Resources, Representing Self, also
Representing the Society For Human Resource
Management
Gail Hewitt, American Association of University
Women
Liz Pratt, Human Resources, Representing Self
Kate Cholewa, Montana Womens' Lobby
Al Smith, Montana Trial Lawyers
Sandra Hare, Human Resources, Representing Self
Jim Kearns, Human Resources, Representing Self

Informational Testimony: Jack Copps, Human Rights Commission

Opening Statement by Sponsor:

SEN. DALE MAHLUM, SD 35, Missoula, introduced SB 67. He stated it is a bill which pertains to marital status in the State of Montana. Either a husband or wife or both can work at the same place of employment. It is basically a bill in which an employer can advertise for the person who is qualified for a position regardless of the fact that person's spouse is already employed at that particular place of business. **EXHIBIT(1as08a01)**

David Aronorsky, General Counsel, University System of Montana, further explained this bill, requested by the University System, deals with problems they see in the State of Montana. This is in the inability to recruit faculty and administrators because of the language in the Montana Human Rights Act. This act prohibits hiring of a person's spouse for employment in the same place of business. **EXHIBIT(1as08a02)** He pointed out that Montana is a large minority of states which prohibits this. On the last page of his exhibit are listed the states which have no marital discrimination language at all in their state Human Rights Act discrimination language. This legislation does not affect the state anti-nepotism statutes in the public sector. He would like to see Montana brought into the main-stream of states with this language. He believes the intent of the original legislation was to keep married or single people from being discriminated against. We have a legal problem which needs to be cleaned up and he does not believe this hurts the intent of the Human Rights Act at all.

{Tape : 1; Side : A; Approx. Time Counter : 10 - 12}

Proponents' Testimony:

Leroy Schramm, Legal Counsel, Board of Regents, stated the Board of Regents believes this bill is necessary. The two professional households are very common and become more common every day and he believes help is needed in recruiting those professional families.

CHAIRMAN KEATING informed the committee that the amendment **SEN. MAHLUM** suggested **Exhibit 1** deletes Section 1 in its entirety.

{Tape : 1; Side : A; Approx. Time Counter : 12 - 22}

Opponents' Testimony:

Christine Kauffman, Montana Human Rights Network, had some concerns about creating a definition for marital status. She suggested this bill may go beyond what those that drafted it intended to do, especially the phrase at the end which reads "the identity of the spouse". She used an example in the scenario where there is a job opening in which you qualify and the employer says to you that they are not going to hire you because your spouse already works there. This is opposite scenario of what this bill might entail. She gave another example. She thought if the definition was changed in the Human Rights Act, it would create problems.

Jim Nys, Human Resources, Representing Self, also Representing The Society For Human Resource Management, explained he was in opposition to SB 67 as it is currently written. As a Human Resource Consultant he is also representing over 600 members of the Society For Human Resource Management which include professional Human Resource people from all over the State of Montana. He stated that they have a fundamental belief that people should be chosen for jobs based on skills and abilities, not on who they are married to. He said there was a unanimous response against this bill from the members of the Society For Human Resources and that was the number one reason they gave. Secondly, he agrees with the proposed amendment striking Section 1 to the bill as written. According to a Montana Supreme Court decision, the concept of marital status discrimination has to include a consideration of who a person is married to. They also concerned about the effect it has on other employees who have worked long and hard in an organization only to have their jobs taken by someone else, not considering the other person was part of this package deal when a spouse is hired also. He mentioned there are questions as to how this bill might interact with the Veterans' Preference and the Civilians' Preference Laws, also the Wrongful Discharge Act. **EXHIBIT(las08a03)**

Gail Hewitt, American Association of University Women, urged the

committee to vote "do not pass" of SB 67. She believes there is a problem in the University System which she is sympathetic to but this is a very awkward way to fix this problem. She said the American Association of University Women is opposed to this bill.

Liz Pratt, Human Resources, Representing Self, explained she is a Human Resource Manager and also a member of the Society For Human Resource Management and is opposed to this bill for the reasons mentioned by Jim Nys.

Kate Cholewa, Montana Womens' Lobby, said they opposed the bill.

Al Smith, Montana Trial Lawyers, stated their main objection was to the definition of the bill, but also have concerns about the remaining part of the bill. The ramifications of this bill could allow advertisements for married couples only or gay couples only need apply for employment.

Sandra Hare, Human Resources, Representing Self, is also a Human Resource Consultant and opposes the bill for the same reasons mentioned by Jim Nys.

Jim Kearns, Human Resources, Representing Self, is a Human Resource Consultant and a former state personnel officer and is opposed to SB 67 for reasons already described.

{Tape : 1; Side : A; Approx. Time Counter : 22 - 23}

Informational Testimony:

Jack Copps, Human Rights Commission, came to speak about Section 1 but since it has been deleted he simply would like to pass along that if Section 1 is passed it would open up nepotism policies in business which would exclude the opportunity for spouses to be employed.

Questions from Committee Members and Responses:

CHAIRMAN KEATING asked Jim Nys if his society was independent, self-employed providers of Human Services.

Jim Nys responded that 30 to 40 members are self-employed consultants, but the vast majority are in-house personnel people that work for organizations as diverse as Montana Power Company to any organization. It is similar to the C.P.A. Society except it is structured for Human Resources. They do get involved in issues they feel are best for the industry.

Closing by Sponsor:

SEN. MAHLUM closed by mentioning he thought the Human Rights Commission does have a legitimate concern but the amendment should have taken care of this and he doesn't believe they should have a problem. This bill would bring good people into good jobs. Any employer who is astute will take care of these problems before they even have them. He believes this bill is very helpful to the industry.

{Tape : 1; Side : A; Approx. Time Counter : 26 - 27}

HEARING ON SB 21

Sponsor: SEN. DEBBIE SHEA, SD 18, Butte

Proponents: Tom Livers, Department of Environmental Quality
Jerry Keck, Department of Labor & Industry
John Maloney, Department of Labor & Industry
Joseph Liuzza, Department of Labor & Industry

Opponents: None.

Opening Statement by Sponsor:

SEN. DEBBIE SHEA, SD 18, Butte, explained SB 21 will simply transfer enforcement of the Montana Health Act to the Department of Labor. The Safety Bureau under the Department of Labor will administer both occupational health and safety issues. This can only improve the present system because it eliminates duplication and streamlines the procedure. It only makes sense to have the bureau as the enforcement agency. The revisions will transfer one FTE from the Department of Environmental Quality to the Department of Labor. The General Fund money in the amount of \$50,432 will be used at the Department of Labor to fund the program and the General Fund needs of the DEQ will decrease in that amount.

{Tape : 1; Side : A; Approx. Time Counter : 27 - 34}

Proponents:

Tom Livers, Department of Environmental Quality, stated this proposal was drafted with the cooperation of both the Department of Environmental Quality and the Department of Labor. He complimented the Department of Labor & Industry for the manner in which they approached this proposal and the transition should be smooth if the legislation passes.

Jerry Keck, Administrator, Employment Relations Division, Department of Labor, said when the Employment Relations Division Safety Bureau would receive this program if this bill is approved. They believe this is a good government proposal and would consolidate and make more efficient the delivery of services to the Montana employers and Montana workers.

John Maloney, Chief of Safety Bureau, Department of Labor, said he is urging support of SB 21. He stated occupation and health go hand-in-hand, and the Department of Labor currently has staff to ensure employers are in compliance with it. When conducting inspections, they frequently find violations of the Occupational Health Act that put Montana workers in jeopardy. Without formal authority to enforce, they can only suggest to the employer ways to eliminate hazardous situations. Providing the Health and Safety Acts in the same bureau is good government. Issues can be dealt with more swiftly in the same department rather than being transferred and equipment can be shared to the mutual benefit of both safety and health specialists and the industrial hygienists.
EXHIBIT (las08a04)

Joseph Liuzza, Certified Industrial Hygienist, Safety Bureau, Department of Labor, urged the committee's support of this bill.

Opponents: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. SHEA closed stating the long-term impact of this bill will be more coordinated enforcement of safety and health in the workplace for Montana employees. It makes sense to have one department administering it.

HEARING ON SB 77

Sponsor: SEN. BOB KEENAN, SD 38, Bigfork

Proponents: Laurie Eckanger, Department of Public Health & Human Services
Rose Hughes, Montana Health Care Association
Jim Ahrens, Montana Hospital Association
Chris Volinkaty, Executive Director, Developmental Center, Missoula, Montana

Opponents: Jerry Driscoll, Representing Self

{Tape : 1; Side : A; Approx. Time Counter : 36 - 42}

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, Bigfork, stated SB 77 addresses an issue that if not taken care of could cost a lot of money and become a detriment to the clients of the Department of Public Health & Human Services. The Finance and Claims Committee is dealing with this situation in the correct manner at the subcommittee manner.

Proponents:

Laurie Eckanger, Director, Department of Public Health & Human Services, handed out her testimony and a section of the Montana Procurement Act. **EXHIBIT(las08a05), EXHIBIT(las08a06)**

***{Tape : 1; Side : B; Approx. Time Counter : 43 - 60, Comments:
Tape turned to Side B near the end of Laurie Eckanger's
testimony}***

Rose Hughes, Montana Health Care Association, stated that two-thirds of their patients are on Medicaid. They have no say about what price the state pays for nursing home services. The legislature, through the appropriations process, allocates an amount of money through nursing home services for Medicaid recipients and the state agency distributes that money through a formula to the nursing facilities. However, they cannot determine prevailing wage, therefore, need an increase in their reimbursement to cover services. They support SB 77.

Jim Ahrens, President, Montana Hospital Association, said for the reasons already mentioned, they are in support of the bill.

Chris Volinkaty, Executive Direction, Developmental Center, Missoula, Montana, explained they serve children and families in the southern counties of western Montana with developmental disabilities. They want to go on record for supporting this bill. Their employees are definitely underpaid. They have a large turn-over and this is a big concern to them. If this language is not cleaned up, it will cause them to cut services and lay people off.

Opponents:

Jerry Driscoll, Representing Self, said that last session they greatly reduced the occupations that prevailing wage was initiated for. Law used to say that if government contracts out

any service and the contract is assessed for \$25,000, prevailing wage must be paid. He said this bill will make legal what the Department has already been doing for at least 30 years. He did not want people thinking everyone was for this bill.

Questions from Committee Members and Responses:

SEN. BARTLETT asked Laurie Eckanger to explain the prevailing rate for some of the occupations the Health Department is concerned about is and the rate being paid for personal care attendants.

Laurie Eckanger answered they have a list of prevailing wage for each of the occupations and each of the different programs tried to compare them. It was very difficult. Medicaid health care providers are billed for procedures, so they are not able to determine whether a nurse or a nurses aide is providing the procedure. Ms. Eckinger passed the question on to Mike Hanshew.

Mike Hanshew, Administrator of the Long-Care Division, Department of Health, said one example is that they have prevailing wage rates that range from \$8.19 to \$7.38 in the 10 districts. Some of the work they have done with the local senior centers' cooks pays \$6.50 per hour. The difference is between regions. The concern is in the Americans' Act program for the states. The problem they have with how to apply this bill is what category of workers it would apply to and what kinds of contracts.

SEN. BARTLETT asked if we have this many employers paying those rates why that is not affected by prevailing wage.

John Andrew, Department of Labor & Industry, said he is not involved in the rate-setting methodology and does not believe there is anyone present who could answer that question. He will follow-up on it and give the specifics to **SEN. BARTLETT**.

SEN. THOMAS asked Jerry Driscoll that since he mentioned current law is amended and that he had referred to services under the prevailing wage law, if that had to do with the Attorney General Ruling by Attorney General Greeley, just before he left office.

Jerry Driscoll answered that is correct.

SEN. THOMAS asked if he ruled on 'any' service.

Jerry Driscoll said he ruled on what the definition of a service is and his ruling is the same as a law until challenged by a

court.

SEN. THOMAS asked if it was derived out of construction services.

Jerry Driscoll answered he didn't know.

SEN. THOMAS asked in Mr. Driscoll's estimation, would he find anything in general that would exempt the Department of Health & Human Services from complying with it.

Jerry Driscoll answered he thinks they should comply with the law.

Closing by Sponsor:

SEN. KEENAN closed by stating he has spent a lot of time traveling around to the 'care providers' and the pay scale for the providers should be taken care of through the process of the budget.

ADJOURNMENT

Adjournment: 4:00 P.M.

SEN. TOM KEATING, Chairman

GILDA CLANCY, Secretary

TK/GC

EXHIBIT (las08aad)